

CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 286

April 23, 1965

DOUBLE DEDUCTIONS: DISALLOWANCE OF

Syllabus:

The inheritance tax report filed for an estate in 1959, claimed a deduction for attorney's fees paid. Subsequently a "pick up" tax was imposed under Section 13441 of the Revenue and Taxation Code. The additional tax paid was the difference between the tax paid on the original inheritance tax report and the state tax credit allowed on the Federal Estate Tax return.

In 1960, the estate filed a fiduciary return for taxable year 1959 reflecting the income of the estate for that year. Among the deductions claimed was the attorney fees claimed on the inheritance tax return. The deduction was disallowed under Section 17746 since the item had already been deducted on the inheritance tax return and taxpayer had not yet filed a waiver as required by Section 17746.

(1) Does Section 17746 apply even though the inheritance tax is determined prior to the effective date of such section?

(2) Does Section 17746 apply where a "pick up" tax is imposed under Section 13341 of the Revenue and Taxation Code?

(1) Since Section 17746 affects the computation of taxes, its application is governed by the provisions of Section 17034. Under that section it would apply to taxable years beginning after December 31 of the year preceding enactment. Since the section was enacted on May 15, 1959, it would clearly apply to a taxable year beginning on and after January 1, 1959.

(2) Under Section 17746 a taxpayer may ensure the right to claim certain deductions for income tax purposes if a waiver is filed to the effect that the same deductions will not be claimed for inheritance tax purposes. In the case of a "pick up" tax situation, however, the waiver provision is a nullity since it makes no difference whether the deductions were claimed on the inheritance tax return.

A "pick up" tax arises entirely out of the state death tax credit allowed for Federal Estate Tax purposes. The credit is based upon a percentage of the taxable estate determined for federal purposes. Section 2011. In most cases the credit is greater than the inheritance tax paid simply because items are includible in the basic federal taxable estate which are not includible in the

taxable estate for inheritance tax purposes. Thus the tax paid under Section 13441 has absolutely no relationship to the tax which would otherwise be imposed under the provisions of the inheritance tax law. In such a case therefore, whether or not a taxpayer filed the waiver required by Section 17746, his inheritance tax will be exactly the same. If a taxpayer is required to file the waiver to authorize elimination of the deductions claimed on the inheritance tax return it will have no effect on his total taxes since the original tax paid would be increased but would be directly offset by the reduced "pick up" tax payable. Since the waiver accomplishes nothing, general legal principles would not require that one be filed.

Nor does the fact that the deductions in questions were taken in arriving at the amount of basic federal taxable estate warrant the conclusion that they were claimed for inheritance tax purposes.

Section 13441 only provides for a "pick up" tax to the extent that a state death tax credit is allowed against the Federal estate tax. Since the credit is limited under Section 2011 to a percentage of the taxable Federal estate, a taxpayer under no circumstances could eliminate certain deductions for purposes of the state death tax credit only and thus ensure his right to claim them for income purposes.

For these reasons, it is our opinion that when a "pick up" tax has been imposed under Section 13441, there is no double deduction under Section 17746 irrespective of the fact that taxpayer did not file the waiver required by that section.